IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 996 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MUKESH GOVINDBHAI PARMAR - Applicant(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS SUBHADRA G PATEL for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/10/2006

ORAL JUDGMENT

1.0 By way of this application, the externee has challenged the show cause notice dated 25.04.2005, order dated 12.12.2005 passed by the Deputy Police Commissioner, Ahmedabad-respondent No.2 as well as order dated 17.04.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.3.

2.0 Learned Advocate for the externee has

invited my attention to the show-cause notice dated 25.04.2005 issued by respondent No.2. In the said show-cause notice, three offences have been shown as registered against the externee which pertain to 'Prohibition'. Thereafter, order dated 12.12.2005 was passed by the respondent No. 2 externing the externee.

3.0 The externee has challenged the order of externment on various counts. However, learned Advocate for the externee, has restricted her argument to the one aspect only, according to her since all the offences alleged against the externee pertain to 'Prohibition', respondent No.2 ought not to have taken action under Section 56 of the Bombay Police Act. He has further submitted that the externing authority has also not considered the provisions and objects of the Act, and hence, order of externment deserves to be quashed and set aside. In support of her Case, learned Advocate for the externee has placed reliance on a decision of this Court in

the case of ***"Aswin Chandulal Jaishwal Vs. The Deputy Commissioner of Police & Another"*** reported in 1989 Cr.L.R.(Guj.) 517 wherein it was held as under,

> "**If at all the allegations against the petitioner are that he is indulging in bootlegging activities, action can be contemplated only under section 57 of the Bombay Police Act. If the Police could not secure conviction of the petitioner under the Bombay Prohibition Act to enable to take externment proceedings under Section 57 of the Bombay Police Act, alternative cannot be sought by taking action under Section 56 of the Bombay Police Act.** As discussed above, it appears that the activities of the petitioner as a bootlegger are required to be stopped. Considering the notice, it transpires that the anti-social activity of bootlegging is required to be controlled and the petitioner is sought to be removed from the harm';s way for that purpose so that social culture and the social order may not be affected and other persons also may not follow the petitioner in indulging in such business. We have observed that even no material allegation of general nature based on any particular instance and stating the time and place at which such incident had occurred, is stated either in the notice or in the order..."

4.0 On the contrary, Learned A.P.P. has supported the orders of the Authorities and has

submitted that the authorities are invested with the powers to extern such miscreants from adjoining districts by the provision itself for a period necessary and therefore the order cannot be challenged. However, learned A.P.P. is not able to controvert the ground raised by the learned Advocate for the externee.

5.0 Heard. Considering rival side contentions the only question that needs to be addressed by this Court is whether the Authority was justified in taking action against the externee under Section 56 of the Bombay Police Act.

5.1 In my view externing authority before passing the order of externment, must satisfy subjectively that no witnesses are willing to come forward to depose against the externee. In the case on hand, though, all the offences alleged against the externee pertain to 'Prohibition', respondent No.2 has taken action under Section 56 of the Bombay Police Act. On

the contrary, the appropriate remedy for the Authority would have been to take action under Section 57 of the the Bombay Police Act. Hence, in view of the above discussion and in view of the decision of this Court in the case of ***"Aswin Chandulal Jaishwal"*** (Supra) the order of the Authorities deserve to be modified.

6.0 In view of the above, the application is partly allowed. The externment period is reduced to **ONE YEAR** only. The order dated 12.12.2005 passed by the Deputy Police Commissioner, Ahmedabad-respondent No.2 as well as order dated 17.04.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.3 are modified to the aforesaid extent. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(K.S. JHAVERI, J.)

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